IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE,
NAGPUR BENCH, NAGPUR

M. C. A. NO. 760 OF 2004 IN WRIT PETITION NO.953 OF 1990

Ishwar Jagannath Gabhane .vrs. State of Maharashtra and others

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's order

Shri M.D. Lakhe, Advocate holding for Shri R.K. Deshpande, Advocate for the review petitioners (original respondent nos.4 to 6),

Shri G.N. Khanzode, Advocate for original petitioners,

Shri D.B. Patel, AGP for Respondent nos.1 & 3,

Mrs. A.P. Shinde, Advocate for respondent no.2,

None for respondent no.7.

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Coram : **K.J. Rohee & S.R. Dongaonkar, JJ.**
Dated : 17th September, 2007.

1. Shri M.D. Lakhe, Advocate prays for adjournment on the ground that his senior Shri R.K. Deshpande, Advocate for the review-petitioners (original respondent nos.4 to 6) is busy in some other part-heard matter. Needless to say that this

reason is quite insufficient for adjourning the matter which was fixed today after consulting both the sides.

2. Heard Shri G.N. Khanzode, Advocate for original petitioners, Shri D.B. Patel, AGP for respondent nos. 1 and 3, Mrs. A.P. Shinde, Advocate for respondent no.2. We have also gone through the impugned order.

3. It may be noted that the normal principle of law is that once a judgment is pronounced or order is made, the Court becomes *functus officio.* Such judgment or order is final and it cannot be altered or changed, varied or modified. A review of judgment is a serious step and reluctant resort to it is called for only where a glaring omission, patent mistake or like grave error has crept in earlier by judicial fallibility. A power of review should not be confused with appellate powers. Material error manifest on the face of earlier order resulting in miscarriage of justice must be proved. A review by no means is an

appeal in disguise whereby an erroneous decision is reheard and corrected.

4. A perusal of the application for review, in the present case, would show that the review-petitioners seek to invoke the appellate powers of this court under the guise of review application. Hence, we are not inclined to entertain the application, except for one error apparent on the face of record which is about applicability of a particular pay-scale to the original petitioners.

5. In this respect it is important to refer to the prayer clause of the petition. The prayer clause is as under :

> *"1. The respondents No. 1, 2 and 3 to ensure that respondents No. 4, 5, 6 grant pay scales to the petitioners as available to the employees of V.R.C.E. or Govt. Polytechnic Institute as applicable to them.*
>
> *1-(A) The Hon'ble Court further be pleased to declare that all the petitioners being non-teaching staff of the respondent No. 4, 5 and 6,*

are entitled for the pay-scales as per the Maharashtra Civil Services Revised Pay Scale Rule 1988 and, the respondent No.1, 2, 3 and 7 be directed by way of appropriate writ to take effective steps for ensuring that the respondent No.4, 5 and 6 shall pay the pay-scales to the petitioners as per the schedule with retrospective effect, from the date of their initial appointment alongwith the 18 percent interest on the amount due and applicable.

1 (B) Be pleased to direct the Respondent No.4, 5 and 6 to pay the pay scales to the petitioner/employees of Nagpur Polytechnic, Nagpur as per provisions of school code and M.E.P.S. Act, 1977 and also as per State Government norms rules framed from time to time.

1(C) And to the petitioners who are the employees of K.D.K. College of Engineering as per College Code and the various rules prescribed from time to time.

2. Direct the respondent 1, 2 and 3 to take appropriate steps for grant of proper pay scales to the petitioners and take appropriate steps against the respondent no.4, 5 and 6 to ensure compliance in case prayer clause (1) cannot be granted.

3. Direct respondent No.7 to take steps

for fixation of pay scales to the non-teaching staff of the Technical Institution and Engineering Colleges such as Respondent No.4 which are permitted to be run by the State Government."

6. It would thus be revealed that the original petitioners, who are getting consolidated salary for all these years since their appointments, have set up their claim to various pay-scales. Now at the time of hearing of the review petition, the learned counsel for the original petitioners submitted that the pay-scales of non-teaching staff are minimum as per the Maharashtra Civil Services Revised Pay Scale Rule, 1988 and that the petitioners restrict their claim for pay-scales as per the said rules. In this connection, the learned counsel for the original petitioners, invited our attention to the advertisements which were published in the local newspapers on 6.6.1984 (Annexure-12) and 25.5.1987 (Annexure-9). In both these advertisements, it has been specifically

mentioned that the pay-scales would be as per government pay-scales. Those pay-scales appear in the Maharashtra Civil Services Revised Pay Scale Rule, 1988. Hence the original petitioners are entitled to these pay-scales.

7. In view of the above position, para no.21 of the impugned order is modified to the extent that the rule is made absolute in terms of payer clause 1-(A) only with costs. With this modification, the application is disposed of.

8. Needless to say that since the matter is pending since long, respondent nos. 4 to 6 shall implement those pay-scales within a period of three months by paying all the consequential benefits arising out of those pay-scales to the petitioners.

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Lateron :

9. Shri R.K. Deshpande, Advocate appears for the review-petitioners (original respondent nos.4 to

6) and prays that the implementation of the order should be stayed for four weeks in order to enable the review-petitioners to approach the apex court. Shri G.N. Khanzode, Advocate for original petitioners strongly opposes the prayer. Considering the circumstances of the case, we think it expedient to stay the said order for four weeks as prayed for.

JUDGE JUDGE

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